

**EDUCATION FOR THE FUTURE:
LEGAL RIGHTS AND OPPORTUNITIES**

**KEYNOTE ADDRESS OF THE
15th ANNUAL EDWARD V. SPARER PUBLIC INTEREST
LAW CONFERENCE
MARCH 22, 1996**

DAVID HORNBECK[†]

INTRODUCTION

Thank you very much Dean. I am delighted to be back at the Law School this afternoon. As I look around the room, I see people from my past and present. I was a student of Professor Gorman and Professor Lesnick in the early 1970s. A few years later, I worked with individuals who are in the audience from the State Department of Education in Harrisburg. Richard Mandell¹ was part of the interviewing committee that was kind enough to invite me to come to Philadelphia as superintendent two and one-half years ago. Also in the audience is Barbara Bravo, the principal of the Masterman School.

One of my favorite professors was Professor Ed Sparer, whom this conference honors. I remember, particularly, a course I took with him in Welfare Law, where as a class exercise we lived on an AFDC²

[†] Superintendent of School District of Philadelphia. For several years prior to coming to Philadelphia, Mr. Hornbeck worked in more than twenty states with the Business Roundtable, the National Alliance for Restructuring Education, the Center for the Study of Social Policy and the New American Schools Development Corporation. His work contributed significantly to making systems change a centerpiece of the national school reform agenda. He was the primary architect of Kentucky's sweeping 1990 reform legislation. He began his national work on school restructuring issues in 1988 as a partner in the Washington, D.C. law firm of Hogan & Harston.

1. Former Executive Director, School-Business Partnership, Greater Philadelphia First Committee.

2. Aid to Families with Dependent Children (AFDC), Title IV-A of the Social Security Act, 42 U.S.C. §§ 601-17 (1995). AFDC provides monthly cash

allowance for a month. It was quite an extraordinary learning experience. I am pleased to have been asked to address the 15th Annual Edward V. Sparer Public Interest Law Conference.

I will spend this time with you talking about issues of education reform, systemic change, the problems we face in the School District, and how we might address some of them from a legislative, policy and/or litigation perspective. The fact is that public schools are in deep trouble; as a consequence, our country is in deep trouble. Our educational performance, not just in cities, but across the nation, is poor. In Philadelphia, there is a forty-eight percent on-time graduation rate for high school students. Fewer than ten percent of our elementary schools or our middle schools are performing, on average, above the fiftieth percentile.³

The problem of achievement is not isolated to Philadelphia. Examining the National Assessment of Educational Progress test data from a recent report, one discovers that only about five percent of the twelfth graders in the country are able to perform twelfth grade work in math, and only about fourteen percent of the eighth graders are able to perform eighth grade math work.⁴ This data makes clear that the achievement problem does not rest in our big cities alone; it also exists in Montgomery County, Delaware County, and across the nation. The only comfort that our brethren beyond the city's political boundaries have is that they do better than others, at least as long as data from foreign countries is ignored. Numerous studies comparing data from the United States with that of Germany, Taiwan, Korea, and Japan reveal the depth of our problem.⁵

The failure of the United States to succeed in education has huge implications for several reasons. Looking at it through an economic lens, one realizes that between 1973 and today there has been a considerable plunge in the purchasing power of most families in the United States. We have maintained the illusion of sustained purchasing power through coping mechanisms such as deciding not to

payments to needy families with children.

3. Statistics on file with author.
4. Statistics on file with author.
5. Statistics on file with author.

have kids; putting off having kids; or taking a second, third or fourth job; having both parents in a family working; and carrying the burden of more and more credit. If we examine the coping mechanisms employed during these last twenty-three years, we discover that they are "one-time" events. One can only put off having kids once; there are limits on how deeply into credit one can go, and there are limits on how many jobs one can work in a twenty-four hour period.

Another result of poor educational performance is the growing gap between the rich and the poor. This gap is not only between the rich and poor. Because race and language track poverty so closely, it is also between white and non-white people, and between people whose first language is English and those whose first language is not English. This growing gap related to race and language threatens the fundamental tenets of our democracy.

While education is not the entire answer, absent a successful educational system that cuts across race, class, language, disability and gender, we cannot address workforce issues and issues of basic economic development. After working on these issues at the state and national levels, I concluded I was functioning at the margins. Until there is a school district where achievement is high for virtually all students, including youngsters with whom we historically have failed, we are not going to succeed on issues of either the economy or democracy. As a result, I began to look for a big city where the key stakeholders were interested in becoming the first city where virtually all children achieve at high levels.

Philadelphia has the potential to be that city. In the school system, there are experienced school reform veterans who, in many classrooms and in an handful of schools, have created improved learning conditions. We have teachers and principals who have implemented a transformed classroom in which middle-class, English speaking students do well, but in which students across the board do well also. Unless one has either done it or at least conceived it, the prospects of creating such a transformation at scale are remote. There are educators in Philadelphia who know how to create such transformation.

Another important ingredient is the political leadership of Mayor Ed Rendell and City Council President John Street. They have contributed to a sense of hopefulness. As a result, in contrast to many

cities, there is more hope and less cynicism about the future; the city has "turned the corner." Through the work of Richard Mandell and his colleagues in the School-Business Partnership, another key stakeholder, corporate Philadelphia, is prepared to step up to the plate in a more forceful way than the business community in many cities.

When I came to Philadelphia for interviews, I outlined ten things we should do to improve the system. I said, "Please choose me as your superintendent if you want to do these things; but if you do not want to do them, please do not choose me." For the past twenty months, we have pursued that ten point agenda called *Children Achieving*. I want to explicate these ten points, and their importance; and then address several major barriers that we face in the pursuit of our goals.

I. TEN PRINCIPLES OF A SUCCESSFUL SCHOOL SYSTEM

A. *Belief System*

The first principle relates to our belief system. We must believe that all students can learn at high levels. In many instances, people believe this is throw-away rhetoric, something that school boards put in resolutions and superintendents incorporate into speeches. In Philadelphia, we use this as an actual standard against which we measure decisions. Let me illustrate in a couple of ways.

I have been urged to expand the number of special admission high schools. We have extraordinary special admission high schools. Masterman, Central, Girls High, Creative and Performing Arts ("CAPA"), the School of Engineering and Science -- these schools are as good as any in the United States. I maintain a very strong commitment to them. Nevertheless, we have chosen not to expand the number. To do so would cream the next layer of youngsters from the comprehensive high schools. One of the most powerful incentives for students to learn is having other students in the class who are learning. The decision not to expand special admission schools is a policy decision measured explicitly against the standard that we believe that all students can learn at high levels.

A second example is rooted in our accountability system, which is built on the basis of rewards and penalties for student performance. The issue is whether the performance of all students is the basis of the

accountability system. We have to build the system so that a school team cannot come out on the reward side of the ledger unless it succeeds with the students with whom we have historically failed. If we build the incentive system so that a team is rewarded by simply taking the cream of the crop and succeeding with them, that would be an anti-all-children-can-learn policy. Instead, we must have a policy crafted explicitly to be measured against a standard that insists all students can learn at high levels.

I use these two illustrations only to make clear that a belief system built on the premise that all students can learn is not throw-away rhetoric. It is a concrete standard that one can apply in the classroom, the principal's office, the superintendent's office, and in the boardroom on a daily basis. In fact, with every important decision one makes, one should ask, "Does this contribute to or undermine our belief that all students can learn at high levels?"

B. Instituting Performance Based Systems

The second of these principles is the need for a performance-based system. We must define what students need to know and be able to do. We need to set academic "standards." Currently, there is no uniform set of academic standards in Philadelphia. There are different standards between schools, between classrooms, and even inside classrooms. The historic practice of tracking students, for example, in reading groups in the first grade, dividing students into bluebirds and vultures, and having that designation follow them for the rest of their lives is a reflection of different standards for different students. Too often, one finds low standards following the African American students, poor students, students who speak Spanish, and students who have different kinds of disabilities. Overall, the white kids seem to fall into the category of the higher standards. Then we are surprised when a few years later one group of students performs one way and another group performs another way. We need to define a high standard that applies to everyone. The first four academic areas we are working on, and will have completed by the end of August 1996, are math, science, reading, and the arts. We chose to include the arts in the first group because the arts are frequently left out. They are considered of marginal importance rather than at the center; we are trying to change that.

The ability to measure achievement is necessary to make standards meaningful. Standards are worthless unless one can evaluate whether or not they have been met. Here, and in most school districts across the United States, we have used nationally normed multiple choice tests. They are too often an inaccurate measure of high standards. A normed test does not indicate anything more than how a student performs against somebody else. If one student is smart, another student may know a lot but appear to be dumb. On the other hand, if one student is dumb, another student might not know very much and appear to be smart. After measuring these results, we do not have an accurate picture of what a student knows. Instead, student performance should be measured against fixed, high academic standards. This is called, in our jargon, a criterion referenced test. We abandoned the nationally normed tests for criterion referenced tests last year.

The second criticism of multiple choice tests is that while they are good measures in certain respects, they tend to simply reward recall. One of the rules of this type of test-taking is to try to eliminate two answers and then see which one of the other two remaining ones is the best answer. A performance test or a test requiring answers to open-ended questions, in which a student constructs individual answers, is very different. One person in law school used to think I was crazy because I actually enjoyed the fact that there was not a right answer on law school exams. Two individuals could come to opposite conclusions and still get an "excellent" -- perhaps that grading system is still in use here. We are moving from an exclusive reliance on multiple choice tests to a much greater reliance on performance based tests and open-ended questions. A writing test is a perfect example of a performance based test. One performs, one creates by writing.

The third element of a performance based system is the accountability system. At the moment, we have none in Philadelphia. Currently, if a school is wildly successful, with its students achieving at high levels, it will receive intrinsic satisfaction but little else. While important, it is insufficient. At the other end of the spectrum, if a school fails year after year which unfortunately, if measured against student performance in reading, math and science, is characteristic of the vast majority of our schools in Philadelphia -- basically nothing happens; the cycle repeats the following year.

Despite persistent or dramatic failure, penalties are never applied. Too often, even assistance is not given. This makes no sense. A performance system cannot exist unless there are consequences attached to student achievement. Such a system can be designed. In fact, in Kentucky one has been built in which the team, not the individual, is the unit of measurement. A comparison is not drawn between School A and School B; rather, the comparison is between School A and School A's previous performance. Furthermore, performance is not evaluated on an annual basis; it is measured bi-annually, making it a continuous improvement model. The accountability system should not be applied in a meat cleaver way, but as a system that has both intrinsic and extrinsic rewards for performance above and beyond satisfactory; help for school teams that are having trouble; and penalties for school teams and superintendents and all other educators who persistently or dramatically fail. In fact, I insisted on a pay for performance provision in my own contract. This provision now applies not only to me but my thirty most senior managers. Currently, we are engaged, and I will come back to it in a minute, in collective bargaining with the Federation of Teachers. Accountability is the most important issue in our negotiations.

C. Distribution of Power

The third principle in our effort relates to local decision making and is connected to the accountability piece. Responsibility and authority ought to rest at the same level of the governing structure. If I am going to have all the responsibility as superintendent, I want all the power. But if I am going to give the school team a certain amount of responsibility, they ought to have the same amount of power over their budget, curriculum, instruction, scheduling, assignment of students, assignment of teachers, professional development, and disciplinary code. They ought to have control over the variables that result in the teaching and learning conditions in the school -- those things that significantly contribute to or detract from the learning potential of the students. We will have a school council that is comprised of fifty-one percent faculty and the principal, with the balance to include parents, in each of the 257 schools in the City; sixty-seven of our schools will have these councils by June 30, 1996 and the other 190 a year from June 30, 1996.

D. Professional Development

The fourth principle is professional development. We must radically change our behavior if we want to radically change the results. If we change a little bit, we get a little change in achievement. If we change significantly, we will provoke a great deal of change in achievement. We are talking about a culture change as well. One does not engage in a culture change by receiving a directive from the superintendent that says, "You will be pleased to know you are part of an outcome-based, consequence-driven, site based managed system. Let me know how it works out." All of us, when engaging in culture change, must practice it. We have to see a role model, read about it and talk about it with colleagues engaged in similar processes. Thus, professional development is a major component of what we are doing.

I visited the Saturn automobile plant about a year ago and was struck by the fact that last year, every Saturn employee spent an average of eighteen days in staff development. That same year, on average, every Philadelphia teacher spent an average of two days in staff development. It struck me as outrageous that it took eighteen days to learn how to build better cars, but only two days to learn how to "build" better children. Yet the issue of professional development has been one of the most contentious issues. The problem lies in not recognizing that any institution worth its salt is an institution of constant renewal and that constant renewal comes through human resources. Professional development is a critical part of this renewal.

E. Early Intervention

The fifth principle has to do with events that occur prior to the first grade. The focus goes all the way back to conception, because what happens from then until about age six largely influences what happens in algebra class in the eighth grade. Research tells us we can improve many bad outcomes like the criminal arrest rate, unemployment rate, achievement rate, drop-out rate, and even the teen pregnancy rate if a poor student has access to a quality, developmentally-appropriate, four-year-old pre-kindergarten program. We can cut the bad parts of the indicators mentioned above, at least in half, over the subsequent fifteen years. Given that fact, one would

think that every state in America would have provided the wherewithal for four-year-olds -- at least the poor ones, because the rich ones already have it -- to attend these programs. They have not. Only five states have instituted such measures and, regretfully, Pennsylvania is not one of them. Therefore, we are focusing more attention on these early years. The first big success was last year. Philadelphia had been trying for years to have full-day kindergarten and had inched up to 5,000 students. This year, we were able to add 11,000 more. Now, out of our 174 elementary schools, all but twenty-seven have full-day kindergarten, and we are struggling to take the next step in September 1996 to finish that process.⁶

F. Community Assistance

The sixth of these principles is community services and support. Fifty percent of our students are on AFDC and eighty percent of our students are eligible for free and reduced price lunch.⁷ The issues of poverty are persuasive. That is what is so incredibly outrageous about what is going on in Harrisburg right now with medical assistance and the attack on poor people that Congress, particularly the House, has undertaken in Washington.

Poverty breeds a host of non-instructional needs for children and families; so, we are creating Family Resource Networks. There are about twenty people that constitute a Family Resource Network in the ten schools that constitute a cluster. Their job is three-fold. One responsibility is to help address the non-academic needs of children and families by connecting them to resources that exist in the community -- churches, synagogues, mosques, settlement houses, boys clubs, girls clubs, the scouts, and other service agencies. The second responsibility is a 1996 version of "barn raising," to work with the community to build resources where they do not exist. The third responsibility is to advocate for resources that do not exist and cannot be built -- to meet with the Board of Education, the Mayor, the City Council President, the Presbyterian Church, the Archdiocese, or whoever is needed to solve the problem. All these efforts are pursued

6. Statistics on file with author.

7. Statistics on file with author.

with the recognition that non-instructional issues are not, in a normal sense, the responsibility of the school system. We are not and should not be social service agencies. However, we must recognize that our students' chances of knowing chemistry in the tenth grade are greatly reduced if their teeth are rotting, or if they are fearful of getting to school, or if they have not eaten a healthy breakfast.

G. Role of Technology

The seventh of these principles is technology. We believe that students ought to learn at the same high level. How they learn, where they learn, when they learn, and who teaches them ought to be the variables. A different configuration of the answers to those four questions -- how, where, when and who -- will exist for almost every student, certainly for every class of students. If students are taught at a low, rote learning regurgitation level, then teachers could be hired merely to lecture to students who would be responsible for memorizing the information. However, if one is talking about high levels of education with students learning at different paces and pursuing different branches of the same knowledge, but measured against the same standard, one of the necessities is capturing and harnessing the power of technology. Our goal is not to replace teachers, but to enhance the way in which teachers and knowledge and students interact with one another. Thus, we are putting an emphasis on technology. We have been fortunate to raise a fair amount of money for technology -- \$15 million from the National Science Foundation; the largest Department of Education Technology Challenge grant, \$9.5 million; a \$2 million IBM Reinventing Education grant, a \$500,000 Bell Atlantic grant to connect all 257 schools to the Internet; and a \$26 million hardware purchase bond issue. These resources are not nearly enough, but they are a decent down payment.

H. Community Engagement

The eighth of these principles has to do with public engagement. Historically, we have not done a good job reaching out to parents and the community. We tend to keep this relationship at arm's length unless a student gets in trouble; then the parents are called

immediately. It is only when we need them to do something that we reach out for them -- and they sense that. Additionally, some poor parents, who themselves have not done very well in school, do not warm up to the notion of coming to school. As a result, we fall into the trap of saying, "Well, we sent a notice to them and, doggone it, they did not show up." The fact remains, the parent is not there, and until we connect the home with school, we will fail to accomplish our goals.

We have designed several initiatives to link families and schools. The most unusual is a group of sixteen community organizations who have formed an advocacy alliance. They are choosing twenty-two community organizations from around the city, who will each hire a community organizer. These people will not be my employees, but employees of the community organizations. Some of you may remember Saul Alinsky. He began the Industrial Areas Foundation (IAF), which trains community organizers. These organizers will receive IAF training. If I am run out of town, it might be at the behest of these twenty-two community organizers, for whom I helped raised the money! However, I believe deeply that unless one brings independent power and strength to the table, a proper partnership with another institution cannot be maintained. Right now, there is a huge independent-dependent relationship between the school district, the school, the community, and the parents. We need to equalize these power relationships.

I. Proper Funding

The ninth principle is money. It is not an accident that it is ninth. It is not the only important factor, nor is it the most important factor, but it is essential. In Philadelphia, we have \$1,500 less per child, on average, than the sixty-one surrounding school districts. If that figure is applied to classrooms of thirty students each, we have \$45,000 less in each of our classrooms. When a classroom on this side of City Line Avenue is compared to a classroom on the other side, there is \$45,000 more purchasing power on average in the suburbs. If we compare our classroom to Radnor's, which has \$4000

more per student, we have \$120,000 less per class.⁸

J. Principles as Part of a Whole

The tenth principle is that the first nine need to be applied. I have assigned it an individual number because it is one of the biggest barriers we face. People listen to these principles and say, "Boy, that sounds really good. But numbers two, seven, and eight are just too hard, so we can't do those. Which ones do we *really* want to do?" The point is, if we fail to do any one of the nine, then we will have stripped away, in a significant manner, the integrity of the whole. If there are not good tests, but great standards, then the standards are not worth anything. If there are great tests and good standards, but nobody is qualified to teach, then they are worthless. If there is a great accountability system, but all the decisions are made by other people, teachers cannot be fairly held accountable for their actions.

II. BARRIERS TO IMPLEMENTATION

A. The Attitude Problem

There are three significant barriers that we face. The biggest barrier is what kids refer to as an "attitude" problem. A very large number of each of the stakeholder groups -- parents, corporate, elected officials, teachers, administrators -- do not believe that all students can learn. If one does not have the confidence that someone can perform an act, the likelihood of them performing it is minimal.

The second piece of the attitude problem is that even people who believe that all students can learn do not believe that the bureaucracy of the Philadelphia School District can make it happen. We are part of the "system," and those of us at Twenty-first Street and the Parkway must be willing to make radical changes in the way we do business.

B. Accountability

The second big barrier is the issue of accountability. There is only one place in the United States that has a strong accountability

8. Statistics on file with author.

system of the kind I think we need, and that is the state of Kentucky.

Accountability is needed for our children to achieve at high levels. It is just as critical to getting the state resources we need. Most state legislators take the attitude: "Why send more money to Philadelphia? It is just sending money down a rat hole. Good money after bad." As a consequence, we must demonstrate in a hard-edged way that if they send significant amounts of money our way we will do something different with it. An accountability system with a hard edge is one of the ways we can demonstrate that we are serious about improving academic outcomes for Philadelphia's children. It is the only way we will be taken seriously in our requests for fair funding for Philadelphia's schools.

C. Resources

The third big barrier is money. The Governor and the State Legislature are not inclined to give us resources, for the reasons that I have just mentioned. This is not a phenomenon of Governor Ridge or the fact that both Houses are controlled by the Republicans. This is historic and bi-partisan. It is a resistant refusal by the State of Pennsylvania to recognize its obligation to poor kids in Philadelphia. The Governor often points out that we have twelve percent of the kids and we get eighteen percent of the State funds.⁹ What is not pointed out is that forty-four percent of our kids are on AFDC.¹⁰ The point of state funding is equity. It was primarily to equalize funding that the founding fathers of Pennsylvania made the State responsible for education. The State must meet this constitutional and moral obligation or Philadelphia's schools will end up financially and educationally bankrupt.

III. CONCLUSION

It is going to take, in my view, a successful lawsuit and a strong, unified political voice from Philadelphia to change the system. This is one of the reasons I agreed to a residency requirement for my

9. The Philadelphia School District actually receives 15% of State funds if all State funds are considered.

10. Statistics on file with author.

cabinet in City Council. On its face, it might seem unfair, even unrelated to reading, writing, and arithmetic; but, it is related to a strong, unified political voice since the members of City Council were insistent. It is going to take the kind of accountability system that permits us to say, "We are going to do things differently." It is tough to make all these things happen. What is interesting is that almost none of our barriers are related to educational issues. The barriers are ones of will and resolve. The irony is that it is a lot tougher to alter will and resolve than it is to find answers to educational questions. Yet this is exactly the challenge we face in Philadelphia as well as in every other big city in the United States. I believe that Philadelphia can be the first city to find the will to educate all of its children at high levels.

Thank you very much.